

**CLAUSES FOR PURCHASE ORDERS AND BLANKET PURCHASE AGREEMENTS AWARDED BY
OVERSEAS CONTRACTING ACTIVITIES
(Current thru FAC 2001-23)**

FAR 52.252-2 Clauses Incorporated By Reference (FEB 1998)

This purchase order or BPA incorporates the following clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address: <http://www.arnet.gov/far> or, <http://farsite.hill.af.mil/search.htm>

DOSAR clauses may be accessed at: <http://www.statebuy.gov/home.htm>

FEDERAL ACQUISITION REGULATION (48 CFR Chapter 1) CLAUSES

<u>NUMBER</u>	<u>TITLE</u>	<u>DATE</u>
52.212-4	Contract Terms and Conditions – Commercial Items	OCT 2003
52.227-19	Commercial Computer Software – Restricted Rights (if order is for software)	JUN 1987
52.228-3	Workers' Compensation Insurance (Defense Base Act) (if order is for services)	APR 1984
52.228-4	Workers' Compensation and War-Hazard Insurance (if order is for services)	APR 1984

The following clause is provided in full text:

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items (MAY 2004)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clause, which is incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items: 52.233-3, Protest after Award (AUG 1996) (31 U.S.C. 3553).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [marked * apply to U.S. firms only]:

<u>X</u>	(1)	52.203-6	Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C.253g and 10 U.S.C.2402).
<u> </u>	(2) – (14)		[RESERVED]
	(15)	52.222-19	Child Labor – Cooperation with Authorities and Remedies (JAN 2004) (E.O. 13126) [Check if order is for supplies and exceeds the micro-purchase threshold]
<u> </u>		*	
	(16)	52.222-21	Prohibition of Segregated Facilities (FEB 1999)
		*	[Check if the following apply: for supplies, the order exceeds \$10,000 . For services, the order exceeds \$10,000, employees who will be performing the work were recruited within the U.S.]
<u> </u>	(17)	52.222-26	Equal Opportunity (APR 2002) (E.O. 11246)
		*	[Check if the following apply: for supplies, the order exceeds \$10,000 . For services, the order exceeds \$10,000, employees who will be performing the work were recruited within the U.S.]
<u> </u>	(18)	52.222-35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era , and Other Eligible Veterans (DEC 2001) (38 U.S. C. 4212)
		*	[Check if the following apply: for supplies, the order exceeds \$10,000 . For services, the order exceeds \$10,000, employees who will be performing the work were recruited within the U.S.]
<u> </u>	(19)	52.222-36	Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S. C. 793)
		*	[Check if the following apply: for supplies, the order exceeds \$10,000 . For services, the order exceeds \$10,000, employees who will be performing the work were recruited within the U.S.]
<u> </u>	(20)	52.222-37	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S. C. 4212) [Check if you have included the clause 52.222-35]
		*	
<u> </u>			

	(21) –		[RESERVED]
—	(23)		
	(24)	52.225-5	Trade Agreements (JAN 2004) (19 U.S.C. 2501, <i>et seq.</i> , 19 U.S.C. 3301 note) [Check if order for supplies and amount exceeds \$169,000]
X	(25)	52.225-13	52.225-13, Restrictions on Certain Foreign Purchases (DEC 2003) (E.O.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury). <i>[Check if the order is for either supplies or services and the amount exceeds the micro-purchase threshold, <u>unless</u> authorized by OFAC]</i>
—	(26)–(29)		[RESERVED]
	(30)	52.232-33	Payment by Electronic Funds Transfer – Central Contractor Registration (OCT 2003) (31 U.S.C. 3332) <i>[Check if payment will be made by EFT and the contractor has registered in the CCR]</i>
—	(31)	52.232-34	Payment by Electronic Funds Transfer – Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332) <i>[Check if payment will be made by EFT and the contractor has not registered in the CCR]</i>
—	(32)	52.232-36	Payment by Third Party (MAY 1999) (31 U.S.C. 3332) <i>[Check if payment will be made by a third party, e.g., purchase card]</i>
—	(33)	52.239-1	Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a) <i>[Check if the order is for information technology which requires security of information technology, and/or is for the design, development, or operation of a system of records using commercial information technology services or support services]</i>
—	(34) (i)	52.247-64	Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. 1241) <i>[Check if the order is for supplies that may involve ocean transportation: at least 50% of the gross tonnage must be transported on privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for U.S.-flag commercial vessels]</i>
—	(34) (ii)		Alternate (APR 1984) I of 52.247-64 <i>[Check if 100% of the supplies will be transported on privately owned U.S.-flag commercial vessels]</i>
—	(c)	[Reserved]	

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records -- Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) *[This paragraph applies only if award is made to a U.S. firm]* Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause –

- (i) 52.219-8, Utilization of Small Business Concerns (OCT 2000) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (ii) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).
- (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).
- (iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
- (v) [Reserved].
- (vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
(End of clause)

DEPARTMENT OF STATE ACQUISITION REGULATION (48 CFR Chapter 6) CLAUSES

<u>NUMBER</u>	<u>TITLE</u>	<u>DATE</u>
652.225-71	Section 8(a) of the Export Administration Act of 1979, As Amended (if order exceeds \$100,000)	AUG 1999
652.229-70	Excise Tax Exemption Statement for Contractors Within the United States (for supplies to be delivered to an overseas post)	JUL 1988
652.229-71	Personal Property Disposition at Posts Abroad	AUG 1999
652.237-71	Identification/Building Pass (for services where frequent and continuing access to Department of State facilities is required)	APR 2004
652.237-72	Observance of Legal Holidays and Administrative Leave (for services where performance will be on-site in a Department of State facility)	APR 2004
652.242-70	Contracting Officer's Representative (if a COR will be named for the order) Fill-in for paragraph b: "The COR is _____"	AUG 1999
652.242-71	Notice of Shipments (for overseas shipment of supplies)	JUL 1988
652.242-73	Authorization and Performance	AUG 1999
652.243-70	Notices	AUG 1999

The following clause is provided in full text, and is applicable for orders for services:

DOSAR 652.228-71, Worker's Compensation Insurance (Defense Base Act) - Services (AUG 1999) (DEVIATION)

- (a) This clause supplements FAR 52.228-3 and FAR 52.228-4.
- (b) The contractor shall procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier unless the contractor has a DBA self-insurance program approved by the Department of Labor. The contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award. The current rate under the Department of State contract is [*contracting officer insert rate*] of compensation for services.
- (c) The Department of State has obtained a waiver of DBA coverage for contractor employees who are not citizens of, residents of, or hired in the United States, (i.e., local nationals or third country nationals). If any contractor employees are local nationals and/or third country nationals, the contractor shall provide such employees with worker's compensation benefits against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits. If contract performance takes place in a country where there are no local workers' compensation laws, the contractor shall procure Defense Base Act insurance covering those local national and/or third country national employees pursuant to the contract between the Department of State and the Defense Base Act insurance broker.
- (d) Section 16 of the State Department Basic Authorities Act (22 U.S.C. 2680a), as amended, provides that the Defense Base Act shall not apply with respect to such contracts as the Secretary of State determines are contracts with persons employed to perform work for the Department of State on an intermittent basis for not more than 90

days in a calendar year. "Persons" includes individuals hired by companies under contract with the Department. The Procurement Executive has the authority to issue the waivers for these individuals. For those employees, the contractor shall provide workers' compensation coverage against the risk of work injury or death and assume liability toward the employees and their beneficiaries for war-hazard injury, death, capture, or detention.

(e) The contractor agrees to insert a clause substantially the same as this one in all subcontracts. Subcontractors shall be required to insert a similar clause in any of their subcontracts.

(f) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the Department shall modify this contract accordingly.

(g) The contractor shall demonstrate to the satisfaction of the contracting officer that the equitable adjustment as a result of the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expenses, etc.

(End of clause)